

# CITY OF HOUSTON

## Houston Police Department

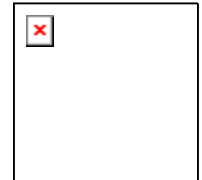
Bill White, Mayor

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CITY COUNCIL MEMBERS: Toni Lawrence Jarvis Johnson Anne Clutterbuck Ada Edwards Addie Wiseman M.J. Khan, P.E. Pam Holm Adrian Garcia  
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August 14, 2006

**Harold L. Hurtt**  
**Chief of Police**

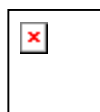


U.S. House of Representatives  
Committee on Homeland Security  
Sub-Committee on Immigration  
Washington, D.C. 20515

Dear Sub-Committee Members:

I am writing to respond to your invitation to testify before your sub-committee hearing on Wednesday, August 16<sup>th</sup>, 2006, at 9:30am, at the Civil Courthouse 201 Caroline St., Houston Texas. First let me say as Chief of the Houston Police Department (HPD) and also as President of the Major Cities Chiefs Association (MCC) that I appreciate and wish to thank you for the honor and privilege of putting into the official congressional record Law Enforcement's comments and concerns on Immigration prior to the full enactment of any legislation on this important subject. I will be submitting as an attachment to my testimony today the MCC's Immigration Committee Recommendations for Enforcement of Immigration Laws by Local Police Agencies (chaired by my Deputy Director Craig E. Ferrell, Jr.), which were adopted on June 7<sup>th</sup> by the MCC for inclusion in the official congressional record. I also have additional attachments for the sub-committee members, but due to their length I have been told they can not be part of the written record.

Let me begin by giving my reaction to a recent federal legislative amendment aimed at eliminating federal law enforcement funding to local police. In short, both myself and chiefs of major cities across the country are dismayed by any legislative action aimed at excluding the City of Houston and/or other local jurisdictions from receiving needed federal law enforcement funds. These funds are needed to put more officers on the streets of Houston, protect our neighborhoods, investigate and prevent murders, rapes, assaults, robberies, burglaries, and provide for homeland security efforts. It seems clear that some in Congress and the public fervently believe local police should become involved in enforcing federal civil immigration laws. Given these strong beliefs, we are left to wonder why the recent legislative amendments were not written to provide increased federal funding to local police to support such



enforcement. Instead the amendments have sought to eliminate funding and penalize not only the City of Houston, but also Harris County, and other local and national jurisdictions, which will be negatively effected by this amendment. The end result of any law enforcement funding exclusion amendment, if it is applied to Houston and other communities like Houston would be to make our local communities less safe. In other words these amendments would have the opposite effect of their purported purpose.

Illegal immigration is being hotly debated in Congress and in our local communities. Opinions on how to address this complex issue differ greatly and emotions run high. Extremes exist on either side of the debate as represented by the recent mass demonstrations by immigrant groups and their supporters and the funding exclusion amendment and the referendum effort of the group Protect Our Citizens in Houston. Both myself and chiefs of police in MCC representing first responders to over fifty (50) million residents respectfully disagree with any effort to eliminate federal law enforcement funding and in effort to create an unfunded mandate. **Illegal immigration is an issue that effects our nation as a whole and any solution should begin first at the federal level with securing the borders and increasing enforcement by federal agencies.**

Local enforcement of immigration laws raises complex legal, logistical and resource issues for local communities and their police agencies. The City of Houston's polices and those of most major cities across America reflect the challenges and realities faced by a City and police agency that is responsible for protecting and serving a diverse community comprised of citizens, non-citizens, legal residents, visitors and undocumented immigrants. The City's policies seek to best protect and serve this diverse community as a whole, while taking into account: the reality that the City does not have unlimited resources; its officers are prohibited by state law from racial profiling and arresting persons without warrants and without well established probable cause; is subject to civil liability for violating such laws; and has the clear need to foster assistance and cooperation from the public including those persons who may be undocumented immigrants. **In an effort to clarify the City's reasoned and model approach to this issue I have provided the following statements regarding the City's policy and why we oppose the positions represented by the federal fund exclusion amendment and Protect Our Citizens' referendum.**

### **CITY DOES NOT HAVE A SANCTUARY POLICY**

Currently, the police department is operating under General Order 500-5[See attached Exhibit 1]. General Order 500-5 was implemented in 1992 by then Chief Nuchia, who is currently serving as a Justice in the Texas Judiciary's First Court of Appeals. The General Order includes the following provisions:

- ⇒ Houston police officers may not stop or apprehend individuals solely on the belief that they are in this country illegally.

- ⇒ Officers shall not make inquiries as to the citizenship status of any person, nor will officers detain or arrest persons solely on the belief that they are in the country illegally.
- ⇒ Officers will contact the [Federal Immigration Authorities] regarding a person only if that person is arrested on a separate criminal charge (other than Class C misdemeanor) and the officer knows the prisoner is an illegal alien.”

The department has issued clarifications of our “immigration” policies and implemented changes to the department’s enforcement policies to increase cooperation between the department and federal agencies on immigration matters that are criminal in nature. [Exhibit 2] In the summer of 2005, I directed Executive Assistant Chief Thaler, Assistant Chief Perales and Deputy Director/General Counsel Craig Ferrell to meet jointly with representatives of the U.S. Attorney’s office and I.C.E. to discuss the department’s response to immigration detainees. Based on those discussions, **the department developed procedures to accept and act upon criminal immigration detainees issued by I.C.E. The police department further clarified that our officers are allowed to take into custody any person who the federal authorities state is a criminal suspect and for whom they will authorize detention directly into a federal detention facility. In addition, whenever the department has a person in custody on other criminal charges, the department will not release the person from custody for up to 24 hours after we have received formal notice from federal authorities that they are wanted for criminal violations.**

The City is committed to assisting I.C.E and any other federal agency wherever possible and reasonable to enforce against criminal violations and address criminal matters. **The Houston Police Department has always acted to enforce laws relative to criminal violations and criminal matters,** accepted criminal warrants and criminal detainees and assisted in criminal investigations, regardless of whether they emanated from other jurisdictions or arose out of federal or state laws. Our officers are currently involved in various federal task forces addressing criminal matters including violent criminal gangs. **Because we have and will continue to enforce laws relative to criminal violations against any and all persons, regardless of their immigration status, the department and thus the City does not have a “sanctuary policy” as opponents of our policies have alleged.** This is not only the City’s or the police department’s opinion but also that of Robert Rutt the Deputy Special Agent in Charge for Immigration and Customs Enforcement [I.C.E]. In a recent Houston Chronicle article he stated that “Houston is not a sanctuary City...” In the same article he further acknowledged the police department’s significant cooperation with I.C.E. [Exhibit 3]

### **CONCERNS WITH LOCAL ENFORCMENT OF FEDERAL IMMIGRATION LAW**

Local enforcement of federal immigration laws raises many daunting and complex legal, logistical and resource issues for the City of Houston and the diverse community it serves. Like other jurisdictions our policy in this area must recognize the obstacles, pitfalls, dangers and negative consequences to local policing that would be caused by immigration enforcement at the local level.

**LACK OF CLEAR LEGAL AUTHORITY**

The federal government has clear authority over immigration and immigration enforcement, but that is not true for local police officers including the Houston Police Department. Federal law does not require the states or local police agencies to enforce immigration laws nor does it give the states or local agencies the clear authority to act in the area of immigration enforcement.

*Criminal vs. Civil Matters*

Federal immigration laws involve both civil and criminal aspects. The federal government and its designated agencies such as I.C.E. and the Department of Justice have clear authority and responsibility to regulate and enforce immigration laws regardless of whether or not the process used for enforcement is criminal or civil in nature. The federal agencies have the authority to determine if a person will be criminally prosecuted for their violations of immigration laws or be dealt with through a civil deportation process. Based on their authority, training, experience and resources available to them, these federal agencies and the federal courts are in the best position to determine whether or not a person has entered or remained in the country in violation of federal regulations and the applicability of criminal or civil sanctions.

The authority of local police officers to act to enforce against criminal acts is clear and well established. Our officers have no authority to determine if a particular immigration violation would or should result in criminal charges or be handled through purely civil proceedings and regulation. This fact creates a gap in authority for our officers who are generally limited to acting only in criminal matters. Houston police officers do not become involved in purely civil matters between disputing parties.

**As stated above the Houston Police Department and its officers keep their focus on criminal matters and violations. We assist the federal agencies with all criminal matters including those that involve immigration status,** but the federal agencies must clearly state that the matter relates to criminal violations by issuing criminal warrants, criminal detainers or criminal holds.

*State and Federal Restrictions on Authority to Arrest and Detain*

State laws also restrict a local police officer's authority to act even in criminal matters in such a way that it would prevent or hinder the officer's ability to investigate, arrest or detain a person for immigration violations alone. Federal agents are specifically authorized to stop persons and conduct investigations as to immigration status without a warrant. Local police officers are constrained by local laws that deal with their general police powers such as the ability to arrest without a warrant, and prohibitions against racial profiling.

**In Texas, peace officers can only arrest a person without a warrant in specific situations.** Section 14.01, 14.03 and 14.04 of the Texas Code of Criminal Procedures clearly defines this authority. [Exhibit 4] Section 14.01 states and officer can arrest a person without a warrant who

has committed an offense in the officer's presence or view. Section 14.03 defines specific situations in which an officer can arrest a person without a warrant such as those involving an assault with possible future injury, family violence, violations of protective orders or interference with emergency calls. Finally, section 14.04 allows arrest without warrant if a felony has been committed and an escape is likely and the officer does not have time to get a warrant. **These sections do not authorize a Texas peace officer to arrest a person without a warrant for illegally entering the United States. In Opinion No. H-1029, the Texas Attorney General evaluated the authority of Texas peace officers under Section 14.01, 14.03 and 14.04 and concluded that Texas peace officers under state law "do not...have authority to arrest an individual solely upon the suspicion that he has previously entered the country illegally..."[See AG Opinion H-1029 attached as Exhibit 5]**

Likewise police officers are restrained by the constitutional protections of the Fourth Amendment from seizing or detaining a person without sufficient probable cause in immigration situations. The United State Supreme Court in the case of U.S. v. Brignoni-Ponce addressed the ability of federal immigration agents to seize and detain a person and subject them to an immigration status investigation. U.S. V. Brignoni-Ponce, 422 U.S. 873, (1975). [Exhibit 6] The Court recognized the broader authority of such federal agents to conduct such investigations without warrant. However, the Court stated even with such broader authority the Fourth Amendment still protected persons from being randomly stopped by officers who have no reason to suspect the persons of having violated any law. Id. At 883-884. **The Supreme Court further concluded that the Fourth Amendment forbids officers from stopping or detaining a person for questioning about their citizenship on less than reasonable suspicion that they may be aliens. Id.** Houston police officers lack the broader authority to conduct immigration investigations that is given to federal immigration agents who can stop a person and ask questions about citizenship without a warrant. Lacking such authority, Houston police officers are still required to develop a clear reasonable justification or probable cause for detaining a person to investigate their immigration status.

**Texas Code of Criminal Procedure Article 2.131 and 2.132 prohibit peace officers from engaging in racial profiling. [Exhibit 7] An officer can not subject a person to police action merely on the basis of their race, ethnicity or national origin.** Immigration enforcement by H.P.D. officers would at a minimum result in increased complaints of racial profiling since a major factor a person would most likely be subjected to an immigration investigation by officers would be their differing nationality, race or ethnicity. **The Supreme Court in the Brignoni-Ponce case also specifically stated that a persons "Mexican ancestry" alone is not reasonable grounds to stop the person and subject them to questioning about citizen. U.S. V. Brignoni-Ponce, 422 U.S. 873, 885, 886(1975).**

## **RISK OF CIVIL LIBABILITY**

In the past, local law enforcement agencies have faced civil litigation and liability for their involvement in immigration enforcement. For example, the Katy, Texas Police Department participated in an immigration raid with federal agents in 1994. A total of 80 individuals who

were detained by the police were later determined to be either citizens or legal immigrants with permission to be in the country. The Katy police department faced suits from these individuals and eventually settled their claims out of court.

**Because local police officers currently lack clear authority to enforce immigration laws, are limited in their ability to arrest without a warrant, are prohibited from racial profiling and lack the training and experience to enforce complex federal immigration laws, it is more likely the City/police department will face the risk of civil liability and litigation if we actively enforced federal immigration laws.**

## **UNDERMINES TRUST AND COOPERATION OF IMMIGRANT COMMUNITIES**

Major urban areas throughout the nation are comprised of significant immigrant communities. In some areas the immigrant community reaches 50-60 percent of the local population. Local agencies are charged with providing law enforcement services to these diverse populations with communities of both legal and illegal immigrants. The reality is that undocumented immigrants are a significant part of the local populations major police agencies must protect, serve and police. The City of Houston faces the same challenges.

Local officers have worked very hard to build trust and a spirit of cooperation with immigrant groups through community based policing and outreach programs and specialized officers who work with immigrant groups. We have a clear need to foster trust and cooperation with everyone in these immigrant communities. Assistance and cooperation from immigrant communities is especially important when an immigrant, whether documented or undocumented, is the victim of or witness to a crime. These persons must be encouraged to file reports and come forward with information. Their cooperation is needed to prevent and solve crimes and maintain public order, safety, and security in the whole community. Local police contacts in immigrant communities are important as well in the area of intelligence gathering to prevent future terroristic attacks and strengthen homeland security.

**Immigration enforcement by local police would likely negatively effect and undermine the level of trust and cooperation between local police and immigrant communities. If the undocumented immigrant's primary concern is that they will be deported or subjected to an immigration status investigation, then they will not come forward and provide needed assistance and cooperation. Distrust and fear of contacting or assisting the police would develop among legal immigrants as well. Undoubtedly legal immigrants would avoid contact with the police for fear that they themselves or undocumented family members or friends may become subject to immigration enforcement. Without assurances that contact with the police would not result in purely civil immigration enforcement action, the hard won trust, communication and cooperation from the immigrant community would disappear. Such a divide between the local police and immigrant groups would result in increased crime against immigrants and in the broader community, create a class of silent victims and eliminate the potential for assistance from immigrants in solving crimes or preventing future terroristic acts.**

## LACK OF RESOURCES

**The budgets and resources of local police agencies are not unlimited. Local police agencies struggle every year to find the resources to police and serve their respective communities.** Since the events of September 11, local agencies have taken on the added duty of serving as the first line of defense and response to terrorist attacks for our country. These efforts on the local level to deter and prevent another terrorist attack and to be prepared to respond to the aftermath of an attack have stretched local resources even further. Since the creation of the Homeland Security Department, federal funding for major city police departments has been reduced given the added duties of securing the homeland. Local agencies have also had to take on more responsibilities in areas that have traditionally been handled by the F.B.I. whose investigative resources are now more focused on counter-terrorism efforts. Local agencies are forced to fill the gap left by the shift of federal resources away from investigating white-collar crimes and bank robberies; areas traditionally handled by federal agencies.

Enforcement of federal immigration laws would be a burden that most major police agencies would not be able to bear under current resource levels. The cost in terms of manpower, facilities and equipment necessary for local agencies to address the 8-12 million illegal immigrants currently living in the United States would be overwhelming. It is estimated that nearly half a million immigrants are in the Houston area. The federal government, which has primary authority to enforce immigration laws, has itself failed to provide the tremendous amount of resources necessary to accomplish such enforcement to its own agencies specifically charged with that responsibility. Local communities and agencies have even fewer resources to devote to such an effort than the federal government, given all the numerous other demands on local police departments.

Immigration violations are extremely different from the typical criminal offenses that patrol officers face every day on their local beats. The law enforcement activities of local police officers revolve around crimes such as murder, assaults, narcotics, robberies, burglaries, domestic violence, traffic violations and the myriad of other criminal matters they handle on a regular basis. The specific immigration status of any particular person can vary greatly. **A person may not be a citizen but still be a legal resident, a recognized refugee seeking asylum, a holder of a visa that may or may not have expired or the person has illegally entered the country. The complexity of the immigration laws is illustrated by the fact that the U.S. has 25 types of nonimmigrant visas, including A1 visas for ambassadors, B2 visas for tourists, P1 visas for foreign sports stars who play on U.S. teams and TN visas for Canadians and Mexicans entering the U.S. to work under NAFTA, and U visas for persons assisting in criminal prosecutions.** Given the complexity of immigration status, whether a person is in fact in violation of the complex federal immigration regulations would be very difficult if not almost impossible for the average patrol officer to determine during an investigation on the streets of Houston.

The Houston Police Department is currently working to put more officers on the street to address crimes such as murder, rape, robberies, assaults, narcotics, prostitution, burglaries, traffic

enforcement, etc. The City struggles continuously to find the resources to address these policing needs. Spending Houston's limited police resources on addressing the estimated tens of thousands of illegal immigrants in our jurisdiction would decrease our ability to accomplish normal policing and public safety goals. If officers were required to enforce or even allowed to enforce immigration laws, a routine traffic stop, which would have only resulted in a ticket, would become an extended immigration investigation. If the officer develops the probable cause to detain the person for immigration status investigation and asks the person about their citizenship status the person may lie or admit that they are a non-citizen. If the person lies the officer must develop facts that would support a reasonable suspicion that the person is a non-citizen in the country illegally.

**If a person admits to being a non-citizen the fact remains that being a non-citizen in this country is not in and of itself a violation of any state or federal law. The officer would then have to develop probable cause to believe the person who is a non-citizen either entered the country illegally or has violated a visa or some other condition for remaining in the country.** Basing his immigration status investigation solely on the person's non-citizenship/national origin could violate the state law against racial profiling. The non-citizen may claim to have misplaced or left his visa or residency card or some other valid immigration documents at home or at their hotel room. A traffic stop, which should have been brief, has now become an extended immigration investigation reducing the available police resources to address other policing needs. This very real scenario does not account for the various other situations in which officers come in contact with individuals who are witnesses, victims, or report crimes.

**It should be noted that new immigration enforcement would not only take from current police resources but would also require increases in resources for enforcement. New resources would be needed to provide equipment, infrastructure and additional officers and personnel for enforcement as well as training for officers. New resources would also be needed to house, feed and transport persons who are subject to enforcement.**

### **HOUSTON'S POLICY IS MODEL FOR OTHER JURISDICTIONS**

The Houston Police Department has not sat on the sidelines but rather has actively worked through its involvement in police associations such as the International Association of Chiefs of Police [I.A.C.P.] and Major Cities Chiefs [M.C.C.] to build consensus on the issue of local enforcement of federal immigration law. **The I.A.C.P. has published articles and adopted a position statement on this issue, which support Houston's policy.** [See Exhibits 8, 9, 10] I am the current M.C.C. president and my Deputy Director, Craig Ferrell, is serving as M.C.C. general counsel. M.C.C. is an association of 57 Chief Executive Officers of police departments located in jurisdictions with over 1.5 million population or have a population over and employ more than 1,000 officers. **During M.C.C.'s recent summer meeting, its members voted to adopt a position statement on this issue which, like I.A.C.P., voiced concerns and opposition to any requirement that local police agencies enforce immigration laws. [Exhibit 11 and tendered with my testimony to become part of this committee's official record]**



In addition, on MCC's behalf Craig Ferrell recently attended a Law Enforcement Roundtable Discussion regarding border security and immigration hosted by Attorney General Alberto Gonzales. [Exhibit 12] During this meeting the issue of local law enforcement of immigration was discussed. **Attorney General Gonzales stated at this meeting that the federal government is neither requesting nor requiring local agencies to enforce immigration laws on their own and he acknowledged that such enforcement is first and foremost a federal responsibility.** Attorney General Gonzales requested that local police department's to partner with federal agencies to combat criminal immigration matters. He specifically stated he was not asking local police agencies to wade into the complicated area of "civil enforcement."

The issue of local law enforcement agencies enforcing federal immigration laws became a prominent issue in the media and one debated in the law enforcement community since the horrendous events of 9/11. This issue has been further highlighted due to the current debate on immigration reform taking place in congress. **Local enforcement of federal immigration laws raises many complex legal and logistical issues as stated above for the City of Houston. The concerns raised above are shared by other major law enforcement agencies throughout the nation.** Based on our work and discussions with other police agencies, I can confidently state that the City of Houston's approach to this issue is in line with the other major jurisdictions in the country and is viewed as a model policy. [Also see 2 IACP Articles marked as exhibits 12 & 13 authored by Mr. Ferrell on this subject]

## **CONCLUSION**

- **The federal legislative amendments to exclude local communities from receiving federal law enforcement funding are misguided and wrong; just as Houston's Protect Our Citizens efforts to pass a charter amendment requiring Houston Police Officer's to conduct immigration investigations and enforce immigration laws.**
- Both ignore the lack of clear legal authority for our officers in the area of immigration enforcement.
- They turn a blind eye to the legal restrictions against warrantless arrests/detentions, racial profiling, and Fourth Amendment violations to which our officers must adhere and for which the City would face legal liability if we allowed our officers to violate them.
- They are unconcerned and insensitive to the distrust and fear of the police such enforcement would create in our community.
- Finally, they unreasonably call for required enforcement, yet fail to identify how the City and local communities will provide or generate the necessary resources to accomplish such enforcement. What programs, projects and services would Protect Our Citizens suggest the City cut from the current budget to fund new immigration enforcement?

**Chief Harold Hurtt**

**10**

**August 14, 2006**

**Re: Response to House Sub-Committee  
On Immigration & Homeland Security**

Why would our federal legislators not seek to increase federal funding to support the call for local immigration enforcement rather than passing amendments aimed at eliminating all federal funding for local law enforcement needs. Their energies, time and monies would be better spent trying to assist the City of Houston and local communities meet our current law enforcement needs rather than creating new unfunded mandates. **What the City of Houston and all major cities need, along with the federal law enforcement authorities for that matter, are more police officers and more federal agents!**

Sincerely,

Harold L. Hurtt, Chief of Police  
Houston Police Department